IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1229 OF 2005

SUNDERDAS KALYANJI KANKAL .. PETITIONER

Vs.

RAMJIKLAL PREMCHAND & ANR. .. RESPONDENTS

Mr. P. J. Thorat for petitioner

Smt. Anjali Helekar for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-28-3-2005

P.C.

In this petition the original plaintiff has challenged order dated 18/1/05, passed by the Small Causes Court at Bombay on Interim Notice No. 1509 of 2004 in Appeal (St.) No. 589 of 2004. By the impugned order the Small Causes Court has discharged the notice taken out by the plaintiff for condonation of delay in preferring the appeal.

2. According to the petitioner his advocate Shri Chandan was admitted in Jaslok Hospital and was discharged on 11/4/04. In the circumstances he could not take prompt steps and file the appeal memo in time. The learned Judge has observed that Advocate Chandan was discharged only in three days and, therefore, it cannot be a ground for not filing the appeal in time.
3. In my opinion, this is not a correct approach. Medical certificate of Advocate Chandan was filed in the court. There can be no dispute about the fact that Advocate Chandan was admitted in hospital. It is true that he was discharged within three days but one cannot expect an advocate who is dischargerd from hospital to immediately take up the matter and prepare appeal memo and file it in the court. Besides the delay is only of 10 to 13 days. In the interest of justice it deserves to be condoned.
4. In the circumstances the impugned order dated 18/1/05 is set aside. Interim Notice No. 1509 of 2004 in Appeal (St.) No. 589 of 2004 is allowed. The Appellate Bench of the Small Causes Court at Bombay is directed to hear the said appeal for admission on merits.
5. Petition is disposed of.
6. Parties to act on authenticated copy of this order.

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